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Supreme Court, U.S.
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NO. 99-62

In The
SUPREME COURT OF THE UNITED STATES

SANTA FE INDEPENDENT SCHOOL DISTRICT,

Petitioner,

v.

JANE DOE, Individually and as next of friend for her minor children, Jane and John Doe, et al.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO INTERVENE BY MARIAN WARD

KELLY J. COGHLAN
Counsel of Record
COGHLAN & ASSOCIATES
505 Lanecrest, Suite One
Houston, TX 77024-6716
(713) 973-7475
Attorney for Marian Ward

App

MOTION FOR LEAVE TO INTERVENE BY MARIAN WARD

Pursuant to Rule 24, Federal Rules of Civil Procedure, Marian Ward respectfully requests leave to intervene and in support shows the following:

1. In the present case, Plaintiffs' Original Complaint against Santa Fe Independent School District was filed April, 1995.

2. At that time, Marian Ward was not in high school but was in the eighth grade. Marian Ward was not elected to give the pre-game football solemnizations until May, 1999 (subsequent to the Fifth Circuit's adverse ruling of February, 1999). From on or before April, 1995, to the present, Marian Ward has been enrolled and attending public schools in the Santa Fe Independent School District [hereinafter "SFISD"], and her parents have been taxpayers of SFISD. Marian Ward is presently eighteen years old, a senior enrolled in and attending Santa Fe High School, and living with her parents.

3. From the time the original suit in the present case was filed in 1995, until February 26, 1999 (the date the Fifth Circuit announced its' decision), the SFISD Football Policy had been interpreted by the federal court to permit student-led, student-initiated prayerful speech at Santa Fe High School football games.

4. It was not until February 26, 1999, that students of Santa Fe High School, including Marian Ward, for the first time lost their ability to have an elected student representative give a student-led, student-initiated prayerful message (on the same basis as a similar secular message) under the SFISD Football Policy. A few months later, Marian Ward became the student representative elected to give a message under the Football Policy—being the first

such student after the Fifth Circuit's adverse ruling in the present case.

5. In May, 1999, Stephanie Vega and Marian Ward (as alternate runner-up) were elected by their peers to deliver football pre-game messages for the 1999/2000 school year. At the time of Stephanie Vega's and Marian Ward's selection, the Petition For Writ Of Certiorari in this case was still pending. Therefore, no one could effectively intervene in the present case at that time.

6. On August 25, 1999, as a result of a threat from the Superintendent of SFISD, Stephanie Vega resigned as the student representative, and Marian Ward took her place as the elected alternate runner-up. Soon thereafter, Marian Ward began encountering similar and increasingly hostile and intimidating pressure and threats from SFISD school officials. *See* Brief *Amici Curiae* For Marian Ward And Other Students And Parents Of Santa Fe Independent School District In Support Of Petitioner [hereinafter "*Amici* Brief"] at 2-3 & n.6; *see also* App. C and D to *Amici* Brief.

7. On September 2, 1999, Marian Ward filed suit against SFISD: *Ward v. Santa Fe Indep. Sch. Dist.*, No. 99-CV-556 (D. Tex. filed Sept. 2, 1999) [hereinafter "*Ward v. Santa Fe*"]. At that time, Marian Ward could not effectively intervene in the present case since the Petition For Writ of Certiorari was still pending.

8. Certiorari was granted in the present case on November 15, 1999.

9. It was not until November 15, 1999, that Marian Ward had the first possible opportunity to intervene in the present case after becoming the student representative elected to deliver a pre-game message under the Football Policy and since filing suit against SFISD.

10. Marian Ward participated in filing with this Court a Motion For Leave To Participate In Oral Argument As *Amici*

Curiae And For Additional Time For Oral Argument [hereinafter "Motion To Participate"], believing that the granting of the Motion would allow her attorney to address and protect her legal interests, as well as those of the other 158 SFISD *Amici* students and parents with similar interests. The Motion To Participate was denied, with notice of ruling received by Ward's counsel via mail on January 27, 2000. It was at this point that Marian Ward became aware that the only recourse left to protect her legal interests was through intervention. This is the point at which Marian Ward knew that her "interests...would no longer be protected" except through intervention. *United Airlines v. McDonald*, 432 U.S. 385, 394 (1977). Marian Ward filed this Motion For Leave To Intervene promptly upon receiving notice of the denial of the Motion To Participate.

11. Under the particular circumstances of this case, application to intervene is being timely made by Marian Ward. *See NAACP v. New York*, 413 U.S. 345, 366 (1973) ("Timeliness is to be determined from all the circumstances"). Marian Ward claims an interest relating to the subject of this action and is so situated that the disposition of the action may, as a practical matter, impair Marian Ward's ability to protect her interests--since a final decision in this case may be dispositive of Marian Ward's rights and interests in *Ward v. Santa Fe*.

12. The legal interests of Marian Ward, contrasted with the legal interests of Petitioner, differ--as a matter of law. The focus of the attorneys for SFISD is necessarily upon defending SFISD's football policy as not violating the Establishment Clause. The attorneys for the school district (as with all governmental bodies) must represent the broad public interest, not just the concerns of a single student, such as Marian Ward. *See Sierra Club v. Epsy*, 18 F.3d 1202,1208 (5th Cir. 1994) ("The government must represent the broad public interest, not just the concerns of [one]"). The interests and claims of Marian Ward, on the other hand,

are as to her legal abilities as a student citizen to exercise her personal liberties granted her under the First and Fourteenth Amendments, without governmental interference. These issues should be heard and considered together since a decision on the former will likely be a decision on the latter.

13. The necessity of the litigation of *Ward v. Santa Fe* demonstrates the dichotomy and divergence of legal interests between SFISD and Marian Ward. SFISD's actions made it necessary for Marian Ward to file suit against SFISD on September 2, 1999, for alleged violations of the Establishment Clause and Ward's constitutional rights. *See* App. C to *Amici* Brief (Affidavit of Marian Ward filed with the Original Complaint); *see also* App. D to *Amici* Brief. On September 3, 1999, Marian Ward was granted a Temporary Restraining Order against SFISD, and on October 6, 1999, Marian Ward was granted a Preliminary Injunction against SFISD. *See* App. F of *Amici* Brief containing the transcript of the federal district court's ruling on Plaintiff's Application for Temporary Restraining Order, a copy of the Temporary Restraining Order, and a copy of the Preliminary Injunction in *Ward v. Santa Fe*.

14. The attorneys for SFISD do not represent Marian Ward, nor can they. With the pending case of *Ward v. Santa Fe Indep. Sch. Dist.*, No. 99-CV-556 (D. Tex. filed Sept 2, 1999) [hereinafter "*Ward*"], and with Marian Ward as an adverse party to SFISD in such litigation, there is a legal conflict of interest between Marian Ward and SFISD.

15. The well known legal abilities of Petitioner's counsel are not being questioned in the slightest respect. But, due to the litigation in *Ward v. Santa Fe* and the inherent divergence of legal interests between SFISD (as a school district) and Marian Ward (as the student elected to solemnize school events under the Football Policy), it is improbable, if not impossible, for SFISD's attorneys to fully be able to represent the legal interests of Marian Ward for

the reasons stated herein. *See Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) ("The requirement of the Rule is satisfied if the applicant shows that representation of his interests 'may be' inadequate; and the burden of making that showing should be treated as minimal").

16. A decision on the merits in the present case may be dispositive of Marian Ward's claims and rights in *Ward v. Santa Fe*. "[T]he *stare decisis* effect of an adverse judgment constitutes a sufficient impairment to compel intervention." *Sierra Club v. Glickmann*, 82 F.3d 106, 109-10 (5th Cir. 1996).

17. Neither party will be prejudiced by the intervention of Marian Ward. Federal courts should allow intervention "where no one would be hurt and greater justice could be attained." *Sierra Club v. Epsy*, 18 F.3d at 1205.

PRAYER

For these reasons, Marian Ward requests leave to intervene.

Respectfully submitted,

KELLY J. COGHLAN
Counsel of Record
COGHLAN & ASSOCIATES
505 Lanecrest, Suite One
Houston, TX 77024-6716
(713) 973-7475
Attorney for Marian Ward

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